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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Case No. 2:20-cr-109-JAD-DJA

Plaintiff,

V.

MYKALAI KONTILAI,  
aka MICHAEL CONTILE,

Defendant.

## **MOTION TO UNSEAL CASE**

**(Filed Under Seal)**

The United States of America, by and through Nicholas A. Trutanich, United States Attorney, Richard Anthony Lopez, Assistant United States Attorney, and Emily Scruggs,

1 Trial Attorney of the Criminal Division, Fraud Section (together the “Government”),  
 2 hereby moves this Court for an order unsealing the case.

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 1. Defendant Mykalai Kontilai, also known as Michael Contile, was charged by  
 5 Indictment on June 3, 2020. A warrant issued for his arrest on the same date. The  
 6 Indictment and warrant were filed under seal pending the defendant’s arrest.

7 2. The Indictment charges the defendant with 18 counts including violations of  
 8 Securities Fraud (15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240-10b-5), Wire Fraud (18 U.S.C.  
 9 § 1343), Money Laundering (18 U.S.C. §§ 1956, 1957), and Willful Failure to File Return  
 10 (26 U.S.C. § 7203).

11 **ARGUMENT**

12 3. Under Federal Rule of Criminal Procedure 6(e)(4), “[t]he federal magistrate  
 13 to whom an indictment is returned may direct that the indictment be kept secret until the  
 14 defendant is in custody or has been released pending trial.” “The decision of a magistrate to  
 15 seal an indictment is entitled to considerable deference.” *United States v. Gigante*, 436 F.  
 16 Supp. 2d 647, 654 (S.D.N.Y. 2006).

17 4. The “‘obvious purpose’” of the Rule “‘is to prevent the requirement of an  
 18 indictment from serving as a public notice that would enable the defendant to avoid arrest.’”  
 19 *United States v. Davis*, 598 F. Supp. 453, 455 (S.D.N.Y. 1984) (quoting *United States v. Muse*,  
 20 633 F.2d 1041, 1043 (2d Cir. 1980)); *see also United States v. Upton*, 339 F. Supp. 2d 190, 194  
 21 (D. Mass. 2004) (“Rule 6(e)(4) presumes a governmental objective of preventing pre-arrest  
 22 flight by the defendant . . . .”).

23 5. The Government initially requested the Indictment and warrant be filed under  
 24 seal. At the time, the Government did not have reason to believe that the defendant was

1 aware of the pending criminal charges against him, although there was reason to believe the  
2 defendant had traveled internationally and had considered the possibility of life as a fugitive  
3 from justice.

4 6. It appears now the defendant is convinced that he has been formally charged  
5 and that an arrest warrant has issued. This belief has kept him from returning to the United  
6 States to defend himself in a federal civil proceeding. He is also avoiding travel to countries  
7 that he believes may extradite him to the United States.

8 7. The interests of justice weigh in favor of unsealing the Indictment.  
9 Publication of the charges may alert individuals at risk of falling victim to any ongoing  
10 schemes perpetrated by the defendant, facilitate cooperation with international law  
11 enforcement partners to apprehend the defendant, and serve as the basis to potentially stay  
12 civil discovery.

13 8. The Government requests that the related sealed docket entries for filings  
14 dated June 9, 2020 and June 15, 2020 remain sealed at this time for the reasons stated in  
15 those documents.

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## **CONCLUSION**

For the reasons stated above, the Government respectfully requests that this Court grant the Government's motion and unseal the case.

DATED this 13th day of October, 2020.

Respectfully submitted,

DANIEL KAHN  
Acting Chief, Fraud Section  
U.S. Department of Justice

NICHOLAS A. TRUTANICH  
United States Attorney

EMILY C. SCRUGGS  
Trial Attorney

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**RICHARD ANTHONY LOPEZ**  
Assistant United States Attorney

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

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Plaintiff,

V.

MYKALAI KONTILAI,  
aka MICHAEL CONTILE,  
Defendant.

## ORDER

Based on the Government's Motion to Unseal Case in the above-captioned matter and good cause appearing therefore,

IT IS HEREBY ORDERED that the case and indictment be unsealed;

IT IS FURTHER ORDERED that the Government's Motion to Unseal Case dated October 13, 2020, be unsealed; and

IT IS FURTHER ORDERED that the related sealed docket entries for filings dated June 9, 2020, and June 15, 2020 remain sealed at this time.

DATED this 13th day of October, 2020.

  
HONORABLE DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE